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BEFORE

THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 92-573-W/S - ORDER NO. 93-346

APRIL 16, 1993

IN RE: Application of Keowee Key Utilities,) ORDER DENYING
Inc. for Approval of the Transfer of) PETITIONS FOR
the Water and Sewer Facilities,) REHEARING AND
Territory and Certificate of Keowee) RECONSIDERATION
Key Subdivision from Realtec, Inc.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petitions for Rehearing and Reconsideration filed by Keowee Key Utilities, Inc. (KKUI or the Company) and Realtec, Inc. (Realtec) of Order No. 93-251. Because of the reasoning stated below, both Petitions must be denied.

The Petition for Rehearing and Reconsideration filed by KKUI is based on the proposition that the only relevant issue before the Commission in this case is whether KKUI is fit, willing, and able to provide adequate service. See, Beard Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948). The premise forwarded by KKUI is clearly erroneous. Under both Regulations 103-504 and 103-704, this Commission is obligated to examine whether or not any transfer of a utility system is in the public interest. See, R. 103-504 and R.103-704. Therefore, the Commission must look beyond whether the transferee in a case is fit, willing, and able to provide adequate service. Our Order No. 93-251 correctly

addressed this issue. The public interest is defined as something in which the public, i.e., the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. See, Black's Law Dictionary and Goldberg v. Barger, 37 Cal. App. 3d 997, 112 Cal. Rptr. 827, 833 (1974).

The Commission hereby reaffirms its decision in Order No. 93-251 that the public interest demands that the transfer application in this case be denied. While KKUI is qualified to operate and maintain the systems, the public, in this case, the residents of the Lake Keowee area, vehemently oppose the transfer. Further, as stated in our Order No. 93-251, the utility system is intrinsically bound into the community, as stated by witness Van Gombos. Therefore, an examination of the situation under the public interest standard demands a denial of the transfer. The "reserved areas" and lack of easements certainly raise a question as to the residents legal rights and/or liabilities. This Commission believes that it correctly went beyond the determination of KKUI being "fit, willing, and able" in Order No. 93-251 to properly examine the "public interest" in this case. For these reasons, the Petition for Rehearing and Reconsideration filed by Keowee Key Utilities, Inc. must be denied.

The Petition for Rehearing and Reconsideration filed by Realtec, Inc. presents similar arguments. Again, Realtec alleges that the Commission committed error in its interpretation of the term "public interest." Clearly, the public interest was served

by the Commission's action in this case. Realtec's allegations that the Commission committed error in allowing the introduction of certain testimony was clearly erroneous. Such a determination is clearly within the discretion of the Commission for determination. In particular, Realtec objected to the introduction of the testimony by Van Gombos and Kennard. Clearly, the two witnesses, although not professionals in the area of real-estate or law, were highly intelligent individuals who had researched easements, real property matters, and financial matters. It is the opinion of this Commission that the testimony of Van Gombos and Kennard was highly relevant.

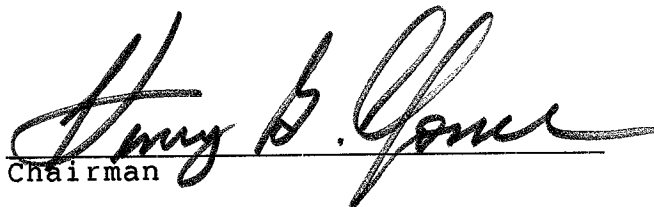
Realtec also alleges error in that it states that Commission Order No. 93-251 violated the constitutional rights of Realtec. Although Realtec does not specifically mention the right to contract, Realtec ignores South Carolina Supreme Court precedent in the case of Anchor Point, Inc. and Gary C. Kinert v. The Shoals Sewer Company and The Public Service Commission of South Carolina, Davis' Advance Sheets, Opinion No. 23664, filed May 26, 1992. In that case, our Supreme Court commented on Public Service Commission jurisdiction versus the constitutional right to contract. The Court quoted its case of Gwynette v. Myers, 237 S.C. 17, 115 S.E.2d 673 (1960), which stated that the right to contract is not absolute. It is subject to the State's police powers, which may be exercised for the protection of the public's health, safety, morals, or general welfare, i.e., the public interest. The Supreme Court went on to hold that, because The

Shoals Sewer Company was a public utility, that the utility was affected with a public interest. Therefore, in that case, the Public Service Commission, under the State's police powers, could establish rates for Shoals Sewer Company, which would alter the rates set out in a master deed. Likewise, in the present case, the system presently owned by Realtec is affected with a public interest. Therefore, we believe that under the Anchor Point case, the Commission, under the police power, may issue a ruling contrary to the parties right to contract. Nor does this Commission believe that Realtec has made a case for violation of its Article I §3 South Carolina Constitution and 14th Amendment United States Constitution rights.

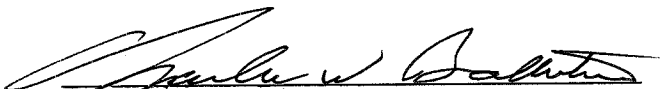
IT IS THEREFORE ORDERED THAT:

1. The Petitions for Rehearing and Reconsideration filed by Keowee Key Utilities, Inc. and by Realtec, Inc. are hereby denied.
2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)